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Note verbale dated 15 October 2009 from the Permanent Mission of France to the United Nations addressed to the President of the Security Council

The Permanent Mission of France to the United Nations presents its compliments to the President of the Security Council.

Pursuant to paragraph 16 of resolution 1846 (2008), the President of the Security Council will find enclosed herewith a note informing the Security Council of the progress of actions undertaken by France in the exercise of the authority provided in paragraph 10 of the above-mentioned resolution.

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Annex to the note verbale dated 15 October 2009 from the Permanent Mission of France to the United Nations addressed to the President of the Security Council

Report on implementation of Security Council resolution 1846 (2008) by France

[Original: English and French]

In paragraph 16 of resolution 1846 (2008) of 2 December 2008, the Security Council "***Requests*** *States and regional organizations cooperating with the Transitional Federal Government to inform the Security Council and the Secretary-General within nine months of the progress of actions undertaken in the exercise of the authority provided in paragraph 10 above*".

In accordance with this provision, France wishes to inform the Security Council of the measures it has taken to implement the resolution.

I. Implementation of paragraph 4 of resolution 1846 (2008)

"***Calls upon*** *States, in cooperation with the shipping industry, the insurance industry and the International Maritime Organization, to issue to ships entitled to fly their flag appropriate advice and guidance on avoidance, evasion, and defensive techniques and measures to take if under the threat of attack or attack when sailing in the waters off the coast of Somalia;*".

Shipowners' professional associations in France have established best management practices (BMPs) if under the threat of attack or attack when sailing off the coast of Somalia in the Gulf of Aden. These practices were validated by the International Maritime Organization (IMO) in June 2009. France has encouraged its shipowners and shipping industry to apply them. Shipowners' adoption of BMPs has been very satisfactory. They would, however, like to see a single point of entry for all calls from vessels in distress.

II. Implementation of paragraph 5 of resolution 1846 (2008)

"***Further calls upon*** *States and interested organizations, including the IMO, to provide technical assistance to Somalia and nearby coastal States upon their request to enhance the capacity of these States to ensure coastal and maritime security, including combating piracy and armed robbery at sea off the Somali and nearby coastlines;*".

1. Multilateral measures

At the subregional IMO conference, held from 16 to 29 January 2009, participating States adopted a code of conduct that provides for the establishment of a regional coast guard training centre in Djibouti and regional and subregional information-sharing centres in Sanaa, Dar es Salaam and Mombasa, building on existing centres in Mombasa and Dar es Salaam. These efforts aim to provide coastal States in the region with the means to combat piracy.

We have also actively participated in Working Group 1 of the Contact Group on Piracy off the Coast of Somalia devoted to building regional capacity in the area of maritime security. France was thus able to take part in the most recent needs assessment mission in this area, conducted by the Working Group 1 in Kenya, Ethiopia and Djibouti.

2. Community measures

Beginning in 2010, the European Union is expected to provide financial support for the training centres through the Critical Maritime Routes project (2009) under the long-term component of the European Commission's Instrument for Stability. Some €4 million are thus earmarked for 2010 (including €1.5 million for each of the two newly established centres).

At the same time, we are encouraging the European Union to swiftly define its comprehensive approach to Somalia, particularly in the area of maritime safety. We support the development of concrete projects that can be implemented rapidly using Community instruments. This means supporting existing projects such as the Djibouti Code of Conduct and embarking upon new ones that are likely to have an immediate impact on counter-piracy efforts (development of a coastal police force and a maritime administration, for example).

3. Action by France

France provides technical support to the maintenance of Djibouti vessels and helps improve their operational capacities. Our goal is to help Djibouti build its capacity to monitor its coasts and to intervene swiftly and efficiently in the water off its coasts.

III. Implementation of paragraph 9 of resolution 1846 (2008)

"***Calls upon*** *States and regional organizations that have the capacity to do so, to take part actively in the fight against piracy and armed robbery at sea off the coast of Somalia, in particular, consistent with this resolution and relevant international law, by deploying naval vessels and military aircraft, and through seizure and disposition of boats, vessels, arms and other related equipment used in the commission of piracy and armed robbery off the coast of Somalia, or for which there is reasonable ground for suspecting such use;*".

1. European action

At the French-Spanish Summit in Zaragoza, Spain, on 27 June 2008, Prime Minister François Fillon and his Spanish counterpart, José Luis Zapatero, issued a joint appeal to their European partners for a European Union initiative on combating piracy off the coast of Somalia and in the Gulf of Aden.

Concrete action on this proposal was taken on 15 September with the creation of the European Union Naval Coordination Cell (EU NAVCO) led by a Spanish admiral. It was tasked with coordinating action conducted nationally by member States (essentially France and Spain) to counter piracy off the coast of Somalia.

Operation Atalanta was officially launched on 8 December 2008 by the ministries for foreign affairs of European Union member States.

Operation Atalanta, the first naval operation of the European Security and Defence Policy (ESDP), brings together all the member States with navies as well as non-member States (Norway, Switzerland, Croatia).

Mobilizing substantial operational means, a dozen EU member States are taking part in Atalanta. Throughout the year of the operation's mandate, it has provided four to eight frigates, two to four helicopters and one to two maritime patrol aircrafts in the area.

Operation Atalanta also foresees the involvement of third countries at varying levels of cooperation (information-sharing, distribution of intervention situations, coordination, cooperation). A framework has been defined with this aim for several countries: Russian Federation, China, India, Malaysia, Saudi Arabia, Japan.

European Union action has three main components:

- Measures to accompany civilian European vessels that are the most vulnerable passing through the Gulf of Aden;
- Measures to escort vessels chartered by the World Food Programme (WFP);
- A monitoring mission in the Indian Ocean.

Moreover, France has stationed soldiers on board French tuna ships off the coast of the Seychelles to ensure their security.

2. Participation by France

France contributes to Operation Atalanta on a permanent basis, providing one to five frigates and a maritime patrol aircraft. Airborne Warning and Control Systems (AWACS) were also used from 25 August to 10 September 2009, on the orders of Force Headquarters (FHQ) in specific operations aimed at deterring pirates from carrying out further attacks and conducting an intelligence mission.

France is expected to take command of the force from August to December 2010 after Italy and Sweden.

IV. Implementation of paragraphs 14 and 15 of resolution 1846 (2008)

Paragraph 14: "***Calls upon*** *all States, and in particular flag, port and coastal States, States of the nationality of victims and perpetrators of piracy and armed robbery, and other States with relevant jurisdiction under international law and national legislation, to cooperate in determining jurisdiction, and in the investigation and prosecution of persons responsible for acts of piracy and armed robbery off the coast of Somalia, consistent with applicable international law including international human rights law, and to render assistance by, among other actions, providing disposition and logistics assistance with respect to persons under their jurisdiction and control, such victims and witnesses and persons detained as a result of operations conducted under this resolution*;".

Paragraph 15: "***Notes*** *that the 1988 Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation ('SUA Convention') provides for parties to create criminal offences, establish jurisdiction, and accept delivery of persons responsible for or suspected of seizing or exercising control over a ship by force or threat thereof or any other form of intimidation; urges States*

parties to the SUA Convention to fully implement their obligations under said Convention and cooperate with the Secretary-General and the International Maritime Organization to build judicial capacity for the successful prosecution of persons suspected of piracy and armed robbery at sea off the coast of Somalia;".

1. France's jurisdiction for acts of piracy committed abroad by foreign nationals

Unlike international law, French law does not define "piracy"; therefore a wide range of offences may be deemed to constitute "piracy".

A number of legal provisions authorize France to exercise jurisdiction regarding acts of piracy committed abroad.

- Article 113-3 of the Criminal Code provides that "*French Criminal Law is applicable to offences committed on board ships flying the French flag, or committed against such ships, wherever they may be. This is the only law applicable to offences committed on board ships of the French navy, or against such ships, wherever they may be*".

- Moreover, article 113-7 of the Criminal Code can be applied. This article provides that "*French Criminal law is applicable to any felony, as well as to any misdemeanour punishable by imprisonment, committed by a French or foreign national outside the territory of the French Republic, where the victim is a French national at the time the offence took place*". Article 689 of the Code of Criminal Procedure expressly establishes the jurisdiction of French courts.

- Furthermore, article 689-5 of the Code of Criminal Procedure provides that "*for the purposes of implementing the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf signed in Rome on 10 March 1988, any person guilty of any of the following offences may be prosecuted and tried in accordance with the provisions set out in article 689-1:*

  1. Felonies defined in articles 224-6 and 224-7 of the Criminal Code;

  2. Intentional offences against life or physical integrity, destruction, defacement or damage, threats to commit an offence against persons or property punishable by Books II and III of the Criminal Code or offences characterized in article 224-8 thereof by article L. 331-2 of the Maritime Harbours Code, if the offence endangers or is liable to endanger the safety of maritime navigation or a fixed platform on the continental shelf;

  3. Intentional offences against life, torture and acts of barbarity or acts of violence punishable under Book II of the Criminal Code, if the offence is related either to the offence defined under point 1, or one or more offences liable to endanger the safety of sea-lanes or of a platform specified under point 2."

Nonetheless, under article 689-1 of the Criminal Code, the French courts have jurisdiction only if the person who is found guilty of the offences enumerated in article 689-5 "is in France".

Thus, French courts and French criminal law may be applied provided that a connection with France is established: for example, a ship targeted by an act of piracy is French or one of the victims is French, the perpetrator is in France, or France has intervened against the pirates in the high seas.

2. Implementation of criminal procedure for acts of piracy committed abroad by foreign nationals

• Transfer of prisoners to Somalia

Many times France has transferred pirates arrested in a national framework (local authorities in Puntland, under an agreement with the Transitional Federal Government) to the competent Somali authorities, on the understanding that they will comply with international humanitarian law and refrain from imposing the death penalty.

• Transfer of prisoners to a third country in the region

The inability of Somalia to fully exercise its jurisdiction to prosecute pirates, coupled with the reluctance of third countries (flag States, States of the nationality of victims and States arresting perpetrators) to take responsibility for prosecuting captured pirates led the European Union to opt for alternative solutions. Thus far, the preferred approach has been to conclude bilateral agreements with stable countries in the region of the Gulf of Aden that are willing to exercise their jurisdiction.

The European Union thus concluded a standing agreement with Kenya in March 2009 with a view to handing over pirates to be tried and imprisoned. A similar agreement is being finalized with the Seychelles.

In terms of financing, €1.7 million was provided to Kenya as an expense mechanism to help the authorities adjudicate the cases of about 150 pirates.

• Transfer to the State of services that conducted the arrest

France, in the cases of the *Ponant*, the *Tanit* and the *Carré d'As* incidents, decided to transfer those accused of piracy to France to be tried. The United States of America, the United Kingdom of Great Britain and Northern Ireland and the Netherlands have made similar choices. Judicial proceedings are under way in these countries.

France has supported the Contact Group on Piracy in setting up, on 10 September 2009 in New York, a multi-donor trust fund to support initiatives to tackle piracy off the coast of Somalia. It has financed efforts to prosecute and punish pirates captured at sea (expenses, structural action to build capacity of countries in the region). France has announced its intention to contribute funds and has put forward its candidacy to take part in the steering group for this fund.